IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WA.No. 1336 of 2007

AGAINST THE JUDGEMENT IN OP.20156/2002 Dated 03/01/2007

APPELLANT: ADDITIONAL 3RD PETITIONER

TINKU VARGHESE,S/O.LATE RAJU VARGHESE
BIPHA HOUSE, DEVALOKAM, PO.,KOTTAYAM.

BY ADVS. M/S.V.K.SUNIL AND AJEY THOMAS

RESPONDENTS: RESPONDENTS & ADDITIONAL 2ND PETITIONER

1. THE LABOUR COURT,ERNAKULAM.

2. C.R.UNNIKRISHANAN,CHENGUTHU VEEDU,
S.H.MOUNT P.O.,KOTTAYAM-686 006.

3. RAINA VARGHESE,D/O.LATE RAJU VARGHESE
BIPHA HOUSE,DEVALOKAM P.O., KOTTAYAM.

4. GEETHA RAJU,W/O.LATE RAJU VARGHESE
BIPHA HOUSE, DEVALOKAM,P.O.,KOTTAYAM.

SENIOR GOVERNMENT PLEADER SRI.M.R.SABU
ADV. SRI.P.RAVINDRA BABU
ADV. SRI.PRAKASH P.GEORGE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 1336 OF 2007

Dated this the 25th June, 2007

JUDGMENT

H.L.DATTU, C.J.

The employer died during the pendency of the proceedings before this Court. Therefore, his legal representative has come on record.

2. The employer had called in question the orders passed by the Labour Court, Ernakulam in I.D.No.165 of 1993.

3. Since employment was denied to Sri.C.R.Unnikrishnan, after failure of the conciliation proceedings, the employee had approached the State Government to refer the dispute to the Labour Court for adjudication and decision. The State Government, after considering the case of the employee, was pleased to refer the following issue for consideration and decision by the Labour Court. The issue was whether the denial of employment to Sri.C.R.Unnikrishnan is right or wrong.

4. After reference of the dispute, the Labour Court has issued notice to the employer. The employer had filed his counter claim before the Labour Court.

5. The Labour Court had raised two issues for its

consideration and decision. They are:

> "1) What, if any, is the amount due to the workman from the management as commission arrears?
>
> 2) Whether the workman is entitled for reinstatement of any amount as compensation in lieu of reinstatement?"

6. The Labour Court has answered the aforesaid two issues in favour of the employee. Aggrieved by the orders so passed by the Labour Court, the employer was before this Court in O.P.No.20156 of 2002.

7. In so far as the first issue is concerned, learned single Judge was of the opinion that the Labour Court has travelled beyond the issue referred for its consideration by the State Government. In so far as the second issue is concerned, the learned Judge was of the opinion that the Labour Court, after properly appreciating the evidence on record, had come to the conclusion that there was a denial of employment to the employee by the employer and had awarded an ex-gratia payment of Rs.25,000/-. Aggrieved by the said order passed by the learned single Judge, the employer is before us in this writ appeal.

8. Learned counsel appearing for the appellant would contend that the learned single Judge was not justified in sustaining the orders passed by the Labour Court and awarding the ex-gratia payment of Rs.25,000/-. Therefore, a request is made to set aside the orders and directions issued by

this Court.

9. As we have already noticed, there were two issues before the Labour Court for consideration. So far as the first issue is concerned, in our opinion, the learned Judge was justified in coming to the conclusion that the Labour Court has travelled beyond the issue that was referred for its consideration. Therefore, learned Judge has answered the first issue in favour of the employer and against the employee.

10. In so far as the second issue is concerned, the Court is of the opinion that the evidence on record would clearly demonstrate that there was a refusal of employment by the employer to Sri.C.R.Unnikrishnan. In a case of this nature the Labour Court after appreciating the evidence on record has come to the conclusion that at least an ex-gratia payment of Rs.25,000/- is required to be granted to the employee. Learned single Judge while holding that the Labour Court was justified in granting such a relief has also gone into the findings and conclusions reached by the Labour Court with reference to the evidence on record. Learned Judge is of the opinion that the finding of the Labour Court does not suffer from any perversity whatsoever.

11. Having gone through the orders passed by the Labour Court, the evidence on record and also the orders passed by the learned single Judge, we are of the opinion that the learned single Judge was justified in partly

allowing the Original Petition filed by the employer. The reasoning and conclusions reached by the learned single Judge do not suffer from any illegality. In that view of the matter, interference with the orders passed by the learned single Judge is not called for. Accordingly, the writ appeal requires to be rejected and it is rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/